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Richard C. Duncan

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1953

Nov. 3

SEP 03 1998

CONCORD, N.H.

Conrad C. Turner, Esq., Chairman,  
Board of Trustees,  
State Industrial School  
Manchester, New Hampshire

Dear Mr. Turner:

You have asked the opinion of this office relative to whether or not a child over eighteen years of age who has been convicted and has served time in a house of correction or State Prison can be automatically transferred under R.L., c. 463, s. 23, when it should become necessary to take him back to the Industrial School on a subsequent parole violation. You have further stated in your letter,

"The inmate is now given to the Trustees of the Industrial School as a parole board to discharge any individual when he is in the commission of a misdemeanor or felony after reaching the age of eighteen and being on parole".

R.L., c. 463, s. 16, provides that any scholar distinguishing himself by obedience, diligence and good conduct may be discharged by the trustees whenever they shall deem such discharge for his best interests and that of the state. The language in this section seems to be clear that the only case of discharge can be for a scholar who has in the opinion of the board of trustees distinguished himself by obedience, diligence and good conduct. It is therefore the opinion of this office that the statement in your letter quoted above is a misinterpretation of the said section 16.

I am not certain as to the exact meaning of your first question. However, section 23 of the said chapter provides for the transfer of any child committed to the school who is found by the trustees to be incorrigible and dangerous to the discipline of said school. If, upon a subsequent violation of parole, the trustees of said institution find that the parole violator is

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disseminating, it may be transferred. However, I do not see any way  
in which this could legally substantiate without such a finding in each  
individual case.

In view of the above, it is the further  
opinion of this office that an automatic transfer under s. 23 is not  
permissible until there is a violation of parole which in the opinion  
of the trustees convinces them that the parolee is incorrigible and  
dangerous to the discipline of the school.

Very truly yours,

Arthur D. Bach, Jr.  
Assistant Attorney General

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